

## Joint Venture Agreement

THIS AGREEMENT made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
by and between or among (names) \_\_\_\_\_

WITNESSETH:

WHEREAS:

- A. The parties hereto have agreed to form a Joint Venture for the purpose of submitting a bid to the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION, and if successful to enter into a contract for the construction of (name of project, contract number) \_\_\_\_\_, which contract, together with any modifications and amendments thereto and all force account, changed or extra work thereunder is hereinafter called the CONTRACT, and
- B. The parties hereto desire by this AGREEMENT to define their respective interest in and obligations under said bid and the CONTRACT and the work to be performed thereunder.

NOW THEREFORE, it is agreed as follows:

### 1. FORMATION OF JOINT VENTURE

The parties hereto hereby constitute themselves a JOINT VENTURE for the exclusive purpose of submitting a bid hereinafter described and, if awarded to

them, to enter into and perform the CONTRACT. The obligations of the parties thereunder shall be joint and several. The name of the JOINT VENTURE shall be \_\_\_\_\_. All bids, contracts, subcontracts, and purchase orders shall be made and all funds, equipment, and other property shall be jointly held in that name.

2. PROPORTIONATE SHARES:

- (a) Except as otherwise provided in paragraphs 3, 5, and 9 hereof, the respective interests of the parties hereto in any profits and their respective shares in any losses and liabilities that may result from submitting said bid or executing or performing the CONTRACT or this JOINT VENTURE AGREEMENT, and their interests in all equipment and other property acquired and in all money received in connection with the performance of the CONTRACT (which interest is hereinafter called the "Proportionate Share").

\_\_\_\_\_  
\_\_\_\_\_

- (b) If any liability shall be incurred or if any loss shall result from the submission of said bid or the execution and performance of the CONTRACT or this JOINT VENTURE AGREEMENT, each party hereto agrees to assume and pay its Proportionate Share thereof. If any party hereto shall incur any liability or be required to pay or pay any loss hereunder in

excess of its Proportionate Share, the other parties shall reimburse the said party in such amount or amounts as the liability incurred or loss paid by such party exceeds its Proportionate Share of the total liabilities and losses of this JOINT VENTURE so that each party hereto will have paid its Proportionate Share thereof. Each party agrees to indemnify the other parties against and to hold them harmless from any losses hereunder in excess of such party's Proportionate Share therein. Unless otherwise mutually agreed in writing, all costs and expenses incurred in connection with the preparation of the bid, the submission of the bid and all other matters up to the date of the award of the CONTRACT shall be borne by the party which incurred the same.

3. WORKING CAPITAL:

The parties hereto, from time to time, shall determine the amount of working capital required to perform the CONTRACT and each shall contribute its Proportionate Share, of the amount so determined, to the JOINT VENTURE within ten (10) days after request thereof is made. If any party shall fail to contribute its Proportionate Share of the amount so determined, the other party or parties shall contribute the Proportionate Share of the defaulting party. In such event, and regardless of any later offer by the defaulting party to remedy its default or the later remedy by the defaulting party of its default, the Proportionate Share of each party in the profits of the JOINT VENTURE and

in the ownership of all funds and property of the JOINT VENTURE shall change automatically to the respective proportions that the total amount contributed to working capital by each party bears to the total working capital contributed by all parties, but the Proportionate Share of each party with respect to liabilities and losses shall remain unchanged. In addition to the foregoing, the non-defaulting party or parties shall have the right to assert against the defaulting party any and all causes of action arising out of such default and any and all remedies therefor provided by law.

4. MANAGEMENT:

- (a) Each party shall participate in the management of the JOINT VENTURE, the methods and manner of performance of the CONTRACT, the management powers and duties delegated to the Managing Party and the authority delegated to any other party or person. No party hereto or any other person shall have authority to act for or to bind the other parties hereto or the JOINT VENTURE except as expressly authorized herein.
- (b) The party designated in paragraph 12 below shall be the Managing Party and, subject to the foregoing, shall be responsible for the supervision and management of all work required in the performance of the CONTRACT. The Managing Party shall have and is hereby delegated such powers, authorities, duties, and responsibilities including powers of attorney, as may

be appropriate to enable it properly to perform the duties assigned in 4a. The Managing Party shall be entitled to receive a management fee of that percentage of the gross contract amount of the JOINT VENTURE set forth in paragraph 12 below, which fee shall be deemed an expense of the JOINT VENTURE.

- (c) To the extent available, each party shall furnish to the JOINT VENTURE such personnel, skill, knowledge, and experience as may be required to perform the CONTRACT efficiently and expeditiously. No party shall make any charge against the JOINT VENTURE for any of its ordinary overhead expense or for time expended by its officers and supervisory employees not actually on the JOINT VENTURE payroll or for any expense incurred in preparation of the bid and securing the award of the CONTRACT.

#### 5. LIABILITY TO SURETIES:

The parties hereto shall from time to time execute such application for bonds, indemnity agreements, and other documents as may be necessary in connection with the submission of the bid for an execution and performance of the CONTRACT. It is agreed that the liability of each party for any premium therefor or under any requirement to indemnify any surety shall be jointly and several.

6. BANK DEPOSITS:

All contributions of working capital by the parties hereto and all funds received by the JOINT VENTURE in connection with the performance of the CONTRACT or from any other source whatsoever shall be deposited in such bank or banks and in such account or accounts as the Managing Party may designate. Funds shall be withdrawn only on such signature or signatures as the Managing Party may require.

7. BOOKS OF ACCOUNT:

Separate and adequate books of account shall be kept of the operations of the JOINT VENTURE by the Managing Party and shall be available for inspection by any party hereto at any reasonable time. The Managing Party shall, from time to time, furnish to the other parties periodic statements relating to the progress of the work and financial condition of the JOINT VENTURE. At such intervals as the parties may direct, and in any event upon completion of the work to be performed under the CONTRACT, the Managing Party shall furnish to the other parties a complete account of all receipts and disbursements of the JOINT VENTURE.

8. PURCHASE OF EQUIPMENT:

The JOINT VENTURE shall purchase and acquire such equipment, machinery, tools, materials, supplies, and other properties as the Managing Party deems necessary for the performance of the CONTRACT. Such properties shall be owned by the parties hereto in the same percentage as their respective Proportionate Share, and upon completion of the work, or prior thereto if no longer needed, shall be divided among and distributed to the parties hereto in accordance with said percentages or otherwise disposed of as the parties hereto shall agree.

9. TERMINATION:

- (a) If the parties hereto do not submit any bid or if the CONTRACT is not awarded to the parties hereto, this JOINT VENTURE shall terminate.
- (b) If any party hereto shall dissolve, file, or be subject to any bankruptcy to take over all or substantially all of its assets, or otherwise become unable to discharge its obligations hereunder, then:
  - (1) Such party or its legal representative shall have no further voice in the performance of the CONTRACT;
  - (2) The participation of such party or its legal representative in the JOINT VENTURE's profits, if any, shall be determined after completion and acceptance of the CONTRACT and shall be limited

to the same proportion which the contributions of such party to working capital of the JOINT VENTURE bears to the total contributions whenever made to working capital of all parties hereto, but such party's share of any JOINT VENTURE liabilities or losses shall be and remain its full Proportionate Share; and

(3) The remaining parties shall do all things necessary to complete the CONTRACT and to wind up the affairs of the JOINT VENTURE, including collection of all money due it, payment of discharge of its debts and liabilities, and distribution of its assets.

(c) Subject to the provisions of paragraph 3, and of this paragraph, upon completion and acceptance of the CONTRACT, any assets then being held by the JOINT VENTURE shall be distributed and all profits or liabilities and losses, if any, shall be paid to or divided between or among the parties hereto in accordance with the respective Proportionate Share of each party, and this AGREEMENT shall terminate.

#### 10. NON-ASSIGNMENT:

Any transfer of any rights or interests herein or delegation of any duties, or assignment of this AGREEMENT, except assignment of the right to receive moneys earned or to be earned hereunder, made by any party hereto without the prior written consent of the remaining parties hereto shall be void.



11. AMENDMENTS:

No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by all parties herein.

12. MANAGING AND SPONSORING PARTY:

The Managing and Sponsoring Party shall be \_\_\_\_\_ and shall possess such powers, duties, and obligations as are herein provided. The Management fee provided for in paragraph 4(b) above shall be \_\_\_\_\_ percent (\_\_\_\_%) of the gross CONTRACT amount and this shall be treated as an indirect cost to the JOINT VENTURE.

13. ADDITIONAL TERMS:

- (a) Distribution of profits shall be in accordance with each party's Proportionate Share.
- (b) A Management Committee is hereby established comprised of one representative of each of the parties hereto. The representative of the Sponsor shall be Chairman. Each party may name an alternate representative or representatives. Whenever an alternate shall attend a meeting of the Management Committee in place of the representative, such alternate shall, for all purposes, be deemed a member of the Management Committee. Representatives shall serve without remuneration for the JOINT

VENTURE. Meetings of the Management Committee shall be held quarterly or may be called more frequently by the Chairman, by any representative or his alternate, or by the Project Manager. Reasonable notice of the time and place of any meeting shall be given to each representative. Such notice may be waived by the written consent of the representative or alternate of each of the parties. All actions by the Management Committee shall be taken at a meeting duly held. In order for a meeting of the Management Committee to be duly held, each party must be represented unless specifically waived by that party. The sponsoring party and the Project Manager shall be guided by the policies established by the Management Committee. The Sponsoring Party and the Project Manager shall make such regular and special reports to the Management Committee as the Committee may request. Prior approval of the Management Committee must be obtained before:

- (1) Submitting or negotiating and CONTRACT change or engineering valuation valued in excess of \$\_\_\_\_\_;
- (2) Leasing equipment where the cost of the lease exceeds \$\_\_\_\_\_;
- (3) Instituting any substantial change of construction methods from those contemplated at bid time;
- (4) Instituting any litigation against owner.

- (c) The Managing Party will provide to the parties quarterly financial statements prepared, in house, on a percentage of completion basis in accordance with generally accepted accounting principals.
- (d) Unless the parties otherwise agree, the Managing Party will arrange for an annual audit of the JOINT VENTURE records by independent certified public accountants, such reports to be completed within four (4) months after the close of the calendar year. It is agreed that \_\_\_\_\_ will be the accountants for the JOINT VENTURE.
- (e) Although the parties contemplate the purchase of primarily new equipment for the prosecution of the work, the Managing Party may consider it to be in the interest of the JOINT VENTURE to purchase or make short-term rentals of equipment from the parties hereto. Should this be the case, such purchases will be at fair market value as determined by outside appraisals, such appraisals to be made by firm(s) selected by the Management Committee. (Appraisal cost for the account of the JOINT VENTURE.) Short-term rentals will be for periods of one (1) year or less. Short-term rental rates will be no more than industry rates for comparable equipment.

- (f) All salaried permanent staff employed on this project will be employees of the Managing Partner. The JOINT VENTURE will be charged all actual costs associated with their employment while assigned to the JOINT VENTURE.
- (g) Should a JOINT VENTURE partner fail to make a capital contribution when notified by the Managing Partner, and the forecast immediately preceding said request for capital contribution indicate that the JOINT VENTURE will sustain a loss from the performance of the construction CONTRACT, then the defaulting JOINT VENTURER shall pay quarterly default interest with respect to its uncontributed share, at the rate equal to \_\_\_\_\_ of the prime commercial rate quoted on the first day of each quarter by the Bank, (name) \_\_\_\_\_, but not to exceed the legal limit, to the nondefaulting JOINT VENTURES until payment of the uncontributed share or final settlement of the JOINT VENTURE accounts upon completion of the construction CONTRACT, whichever is first. The Proportionate Share of the defaulting JOINT VENTURE partner in any said loss.
- (h) If the JOINT VENTURE has funds in excess of its working capital requirements, then, at the option of the Managing Partner, funds may be loaned to the partners based on their Proportionate Share. The partners will sign notes for these distributions and the notes will be payable on demand.

Interest may or may not be charged on these notes, at the option of the Managing Partner. These notes will be carried as an asset on the JOINT VENTURE books until they are repaid or satisfied by the partners.

(i) \_\_\_\_\_, is designated as the Project Manager for the JOINT VENTURE. \_\_\_\_\_ will receive no compensation from the JOINT VENTURE for his services, except that he will be reimbursed any out-of-pocket expenses he may incur on JOINT VENTURE business.

(j) In addition to their respective participation in the JOINT VENTURE as described in preceding sections, it is agreed that each of the parties hereto, because of their special expertise, will perform the following physical work required by the CONTRACT:

(1) \_\_\_\_\_ will perform all work required by the CONTRACT except as specifically described in Sections 2 and 3 following:

(2) \_\_\_\_\_ under bid items (number and description of item; complete description of the work to be performed. Describe who will be manager, supervisor, and perform this portion of the work. Describe method of records control and payment of invoices.)

14. MISCELLANEOUS:

- (a) This AGREEMENT shall not be deemed to create any permanent partnership or permanent JOINT VENTURE and shall not limit any party from engaging in other business.

## Schedule B — Information for Determining Joint Venture Eligibility

1. Name of Joint Venture

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2. Address of Joint Venture

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3. Phone number of Joint Venture

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4. Identify the firms which comprise the Joint Venture.

- (a) Describe the role of the D/M/WBE firm in the Joint Venture.

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- (b) Describe very briefly the experience and business qualifications of each non-D/M/WBE Joint Venturer.

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5. Nature of the Joint Venture's business.

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6. Provide copy of the Joint Venture Agreement.

7. What is the claimed percentage of D/M/WBE ownership?

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8. Ownership of Joint Venture: (This need not be filled in if described in the Joint Venture Agreement, provided by question 6.)

(a) Profit and loss sharing.

(b) Capital contributions, including equipment.

(c) Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including but not limited to, those with prime responsibility for:



(a) Financial decisions

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(b) Management decisions, such as:

(1) Estimating

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(2) Marketing and sales

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(3) Hiring and firing of management personnel

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(4) Purchasing of major items or supplies

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(c) Supervision of field operations.

Affidavit

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our Joint Venture and the intended participation by each Joint Venturer in the undertaking. Further, the

undersigned covenant and agree to provide the grantee current, complete, and accurate information regarding actual Joint Venture work and the payment therefor and any proposed changes in any of the Joint Venture arrangements and to permit the audit and examination of the books, records, and files of the Joint Venture, or those of each Joint Venturer relevant to the Joint Venture, by authorized representatives of the grantee or the federal funding agency. Any material misrepresentations will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements."

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Name of Firm

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Signature

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Name

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Title

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared (Name)  
\_\_\_\_\_, to me personally known, who, being duly sworn, did  
execute the foregoing affidavit, and did state that he/she was properly authorized by (Name  
of firm) \_\_\_\_\_ to execute the affidavit and did so as his/her  
free act and deed.

Notary Public

\_\_\_\_\_

Commission Expires

\_\_\_\_\_

(Seal)

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared (Name)  
\_\_\_\_\_, to me personally known, who, being duly sworn, did  
execute the foregoing affidavit, and did state that he/she was properly authorized by (Name  
of firm) \_\_\_\_\_ to execute the affidavit and did so as his/her  
free act and deed.

Notary Public

\_\_\_\_\_

Commission Expires

\_\_\_\_\_

(Seal)